

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|               |  |                   |                     |
|---------------|--|-------------------|---------------------|
| Applicant(s): | Tim Keith, et al.  | Group Art Unit:   | 1634                |
| Serial No.:   | 10/743,704   | Confirmation No.: | 8966                |
| Filed:        | December 22, 2003  | Examiner:         | Katherine D. Salmon |
|               |  | Customer No.:     | 27123               |
| For:          | NOVEL HUMAN GENES RELATING TO RESPIRATORY DISEASES AND OBESITY |                   |                     |

**TERMINAL DISCLAIMER UNDER 37 C.F.R. §1.321(C)**  
**TO OBVIATE DOUBLE PATENTING REJECTION**

Mail Stop AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**Identity of Assignee**

The petitioner, Oscient Pharmaceuticals Corporation, having a business address at 1000 Winter Street, Suite 2200, Waltham, Massachusetts 02451 is the owner of the entire right, title and interest in the above-identified application, Serial No. 10/743,704, by virtue of an assignment from Genome Therapeutics Corporation to Oscient Pharmaceuticals Corporation recorded on May 4, 2007, at Reel/Frame No(s) 019249/0762, and in the parent application, Serial No. 09/627,465, now U.S. Patent No. 6,737,519, by virtue of an assignment from the inventors Tim Keith, et al. to Genome Therapeutics Corporation recorded on March 20, 2001, at Reel/ Frame No(s). 011957/0847. The petitioner is also the owner of the entire, right, title and interest in U.S. Patent No. 6,737,519.

Identification of Person(s) Making This Disclaimer

The undersigned disclaimant is the VP of Legal Affairs of Oscient Pharmaceuticals Corporation, and is authorized to sign on behalf of the assignee as identified above.

Extent of Interest

The extent of assignee's interest is in the whole of this invention.

Declaration Under 37 C.F.R. 3.73(b)

I, the undersigned, have reviewed all the documents in the chain of title of the patent application identified above and, to the best of my knowledge and belief, title is in the assignee identified above.

Disclaimer

The petitioner, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, of United States Patent No. 6,737,519. Petitioner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and United States Patent No. 6,737,519 are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, petitioner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of U.S. Patent No. 6,737,519, in the event that U.S. Patent No. 6,737,519 expire for failure to pay a

maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Fee Status

(37 C.F.R. 1.20(d) and 37 C.F.R. 1.321)

☒ large entity--fee \$130.00

☐ small entity--fee \$65.00

Fee Payment

☐ Attached is a check in the sum of \$ .

☒ Charge Deposit Account 13-4500, Order No. 2976-4037US1 any fee required by this paper.

AUTHORIZATIONS:

The Commissioner is hereby authorized to charge any additional fees which may be required for timely consideration of this Terminal Disclaimer under 37 C.F.R. §§1.16-\$1.20 or credit any overpayment to Deposit Account No. 13-4500, Order No. 2976-4037US1.

Dated: 5/15/07By: Robert Spadafora, Jr.

Respectfully submitted,

Robert Spadafora, Jr.  
Registration No. 46,197